

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1976

NO. _____

RONALD HENRY BLYSTONE, JR.,
RICKEY LEE DURST,
BYRON D. FLAKES,
ANTHONY E. PINNICK,
JAMES ALBERT RICE, II,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Petitioners, Ronald Henry Blystone, Jr., Rickey Lee Durst, Byron D. Flakes, Anthony E. Pinnick, and James Albert Rice, III, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit, entered December 9, 1976.

OPINION BELOW

The Court of Appeals entered its opinion on December 9, 1976. A copy of the opinion, affirming the judgment of conviction, is attached as Appendix A.

JURISDICTION

Jurisdiction of this Court is invoked under Title 28,
United States Code, Section 1254(1):

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QUESTION PRESENTED FOR REVIEW

1. May a fine or requirement of restitution be imposed on a defendant sentenced under the provisions of the Federal Youth Corrections Act, 18 U.S.C. § 5010(a)?

STATUTORY PROVISIONS INVOLVED

United States Code - Title 18, Section 5010(a).

If the Court is of the opinion that the Youth Offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.

STATEMENT OF THE CASE

RICKEY LEE DURST

Defendant Durst was charged in a two-count indictment, charging violations of 18 U.S.C. §§ 1708 and 495. On December 5, 1975, Defendant entered a plea of not guilty to both charges. On February 24, 1976, a superseding information charging a violation of 18 U.S.C. § 1701 was filed and Defendant entered a plea of guilty to the charge on that same date. The Defendant waived a Presentence Report and was sentenced to six months imprisonment, sentence suspended and placed on probation for a period of three years pursuant to the Federal Youth Corrections Act, 18 U.S.C. § 5010(a). As a condition of probation, Defendant was ordered to pay restitution in the amount of \$160.00 and a fine of \$100.00. Defendant noted an appeal to the District Court on February 24, 1976.

RONALD HENRY BLYSTONE, JR.

Defendant Blystone was charged with a violation of 18 U.S.C. §§ 661 and 2, theft of property from a government reservation with a value of less than \$100.00. Defendant entered a plea of guilty to the charge on February 24, 1976 and

was sentenced by Magistrate Rosenberg to two years probation under the Federal Youth Corrections Act, 18 U.S.C. § 5010(a) and as a condition of probation was ordered to pay a fine in the amount of \$100.00. Defendant noted an appeal to the District Court on February 25, 1976.

ANTHONY E. PINNICK

Defendant Pinnick was charged in a complaint with a violation of 18 U.S.C. § 661, theft of goods from a federal reservation with a value of less than \$100.00. On April 5, 1976, Defendant entered a plea of guilty before Magistrate Clarence E. Goetz, was sentenced to a suspended sentence, and placed on probation for one year under 18 U.S.C. § 5010(a) and fined \$100.00 as a condition of probation. Defendant noted an appeal to the District Court.

JAMES ALBERT RICE, II

Defendant Rice was charged in a three-count indictment alleging violations of 18 U.S.C. §§ 1708, 1701 and 495. On June 2, 1976, Defendant entered a plea of guilty to the 18 U.S.C. § 1701 charge. Magistrate Rosenberg suspended a six month jail sentence and placed Defendant on probation for two years under the terms of 18 U.S.C. § 5010(a). A fine of \$100.00 was imposed as a condition of probation. An appeal to the District Court was noted.

BYRON D. FLAKES

Defendant Flakes was charged in a complaint with a violation of 18 U.S.C. § 641, theft of public money in an amount less than \$100.00. Defendant entered a plea of guilty before Magistrate Rosenberg on May 26, 1976. Imposition of sentence as to imprisonment was suspended and Defendant was placed on probation for one year under 18 U.S.C. § 5010(a). As a condition of

probation, Defendant was ordered to pay a fine in the amount of \$50.00. An appeal to the District Court was noted.

AS TO ALL DEFENDANTS

On December 9, 1976, the United States Court of Appeals for the Fourth Circuit affirmed the decision of the District Court, citing its recent decision in United States v. Oliver, No. 75-2161 (4th Cir. October 5, 1976).

REASONS FOR GRANTING THE WRIT

As a result of the decision of the Fourth Circuit in this case and the recently decided case of United States v. Oliver, No. 75-2161 (4th Cir. October 5, 1976), a split of authority now exists between the federal Courts of Appeal on the issue of whether a fine or requirement of restitution may be imposed on a defendant sentenced under the provisions of the Federal Youth Corrections Act, 18 U.S.C. § 5010(a). Two Circuits have unequivocally decided that a fine is not permissible. United States v. Bowens, 514 F.2d 440 (9th Cir. 1975); Cramer v. Wise, 501 F.2d 959 (5th Cir. 1954); United States v. Hayes, 474 F.2d 965 (9th Cir. 1973).

Among the federal appellate courts which have decided this important and recurring issue, only the United States Court of Appeals for the Fourth Circuit has held that a fine or requirement of restitution may be imposed in conjunction with a sentence of probation under the Federal Youth Corrections Act. United States v. Durst, No. 76-1905 (4th Cir. December 9, 1976), United States v. Oliver, No. 75-2161 (4th Cir. October 5, 1976). In light of the recurring nature of this question and the irreconcilable divergence of decision in the federal Courts of Appeals, Petitioners respectfully submit that a Writ of Certiorari issue.

CONCLUSION

For the above-stated reason, the Petitioners, Ronald Henry Blystone, Jr., Rickey Lee Durst, Byron D. Flakes, Anthony E. Pinnick, James Albert Rice, II, pray this Court to issue a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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UNITED STATES OF AMERICA,

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CERTIFICATE OF SERVICE

Charles G. Bernstein, a member of the Bar of this Court, certifies that pursuant to Rule 33 he served the within Motion for Leave to Proceed in Forma Pauperis and the Petition for a Writ of Certiorari to the Court of Appeals for the Fourth Circuit on the counsel for respondent by enclosing a copy thereof in an envelope, first-class postage prepaid addressed to:

The Honorable Robert H. Bork
Solicitor General of the United States
Department of Justice
Washington, D.C. 20530

Robert P. Trout, Esquire
Assistant United States Attorney
U.S. Attorney's Office
8th Floor - U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

and depositing same in the United States mails at Baltimore, Maryland, on December 22, 1976, and further certifies that all parties required to be served have been served.

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CHARLES G. BERNSTEIN
Federal Public Defender

APPENDIX A

UNPUBLISHED

United States Court of Appeals

DEC 20 1976

FOR THE FOURTH CIRCUIT

No. 76-1905

United States of America,

Appellee,

-v-

Rickey Lee Durst
Ronald Henry Blystone, Jr.
Anthony E. Pinnick
James Albert Rice, II
Byron D. Flakes,

Appellants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Edward S. Northrop, Chief Judge.

Submitted November 18, 1976

Decided December 9, 1976

Before BUTZNER, Circuit Judge, FIELD, Senior Circuit Judge,
and WIDENER, Circuit Judge.

Robert Trout, AUSA for appellee; Charles G. Bernstein and
Michael S. Frisch (court assigned) for appellants.

PER CURIAM:

In these consolidated cases, several youth offenders appeal judgments of the district court on the ground that a fine or restitution may not be imposed on a person sentenced pursuant to the Federal Youth Corrections Act, 18 U.S.C. § 5010(a). While the appeal was pending, we decided, in *United States v. Oliver*, No. 75-2161 (4th Cir. October 5, 1976), that the imposition of a fine as a condition of probation is consistent with the Act. For the reasons expressed in Oliver, we believe that a requirement of restitution is also consistent. The judgment of the district court is summarily affirmed.